

## **COMMERCIAL ACTIVITIES AGREEMENT**

**THIS AGREEMENT**, dated May 25, 2012 ("Effective Date"), is by and between **THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**, a California corporation ("University"), on behalf of the University of California Berkeley ("UCB"), and the **ASSOCIATED STUDENTS OF THE UNIVERSITY OF CALIFORNIA**, a nonprofit unincorporated association ("ASUC").

### **RECITALS**

**A.** The University constitutes a public trust to be administered by the existing corporation known as "The Regents of the University of California," with full powers and organization, and owns and operates the UCB campus.

**B.** The ASUC is a non-profit, unincorporated association that has been recognized by the University since 1887 as the official student government for all students on the UCB campus. The ASUC includes the Graduate Assembly ("GA").

**C.** The ASUC has directly owned and/or operated certain commercial services on the UCB campus referred to herein as "ASUC Commercial Activities," including the student bookstore ("Bookstore"), and has contracted with private vendors for the provision of other commercial services, including food services in the Martin Luther King, Jr. Student Union ("Student Union"), and Eshleman Hall,

**D.** The ASUC has conducted ASUC Commercial Activities in the locations and spaces in the Lower Sproul Plaza and Student Union, including the Martin Luther King Jr. Student Union and the Lower Sproul Mall (formerly Naia Lounge), herein referred to as "Commercial Activity Space").

**E.** On September 21, 1994, the parties entered into a certain Statement of Understanding ("SOU") which sets forth terms on which ASUC Commercial Activities were to be conducted.

**F.** The University, the ASUC and the GA each believes (i) that the ASUC Commercial Activities provide important services to all members of the UCB community, and (ii) that a primary purpose of ASUC Commercial Activities is to provide financial support for on-campus student activities, services and programs authorized by the ASUC and GA ("ASUC Student Activities").

**G.** Each party intends that, as restructured, ASUC Commercial Activities will be conducted to provide the maximum feasible amount of funding for ASUC Student Activities.

**H.** The ASUC has owned and operated the student store on the UCB campus since the 1920's. The parties intend that this Agreement will continue this tradition of service to the campus.

**I.** With respect to its role as the student government, the ASUC and GA have maximum operating and decision-making discretion constrained only by the Chancellor's responsibility under the "University of California Policies Applying to Campus Activities, Organizations, and Students," and his/her obligation to ensure overall fiscal soundness, a safe and healthy environment, and fulfillment of all conditions outlined in specific agreements between the University and the ASUC on the UCB campus.

**J.** The ASUC Senate and the Graduate Assembly approved a resolution recommending amendments to the prior ASUC Commercial Activities Agreement, which created a greater stake for the Graduate Assembly in the success of ASUC commercial activities. Both parties agreed that increasing the Graduate Assembly's stake is fair and creates incentive for the Graduate Assembly to work with the ASUC toward successful commercial activities.

**K.** This Agreement supersedes the existing ASUC Commercial Activities Agreement, dated March 19, 1998, as amended.

**WHEREFORE, INTENDING TO BE LEGALLY BOUND HEREBY,** the parties agree as follows:

**1. ASUC AUXILIARY.** The University and the ASUC acknowledge the administrative arm of the ASUC called the ASUC Auxiliary ("Auxiliary") outlined below, whose Executive Director of the Auxiliary shall be a University employee who shall report to UCB's Chancellor or his/her designee, and who shall be appointed following the advice and consent of the Board.

**1.1** The Auxiliary shall negotiate and manage leases and other contracts with third party providers of ASUC Commercial Activities pursuant to the direction of the ASUC Commercial and Student Services Board (the "Board" described in Section 2.2, below); provide landlord services to such providers; and carry out such other functions, including those described in Section 7, below, as directed by the Board.

**1.2** The Auxiliary shall not undertake any function not directly related to student activities or ASUC Commercial Activities unless otherwise authorized by the Board.

**1.3** The Executive Director of the Auxiliary ("Executive Director") shall meet regularly with the Board, and shall review, consider in good faith, and respond in writing to each recommendation, report, or direction of that Board.

**2. ASUC COMMERCIAL AND STUDENT SERVICES BOARD.** The Board shall establish policy and standards for, and provide oversight over all ASUC Commercial Activities in a manner consistent with all applicable University policies, all as further described in Section 3, below. The ASUC and the University shall appoint the members of the Board in the following manner:

**2.1** The Chancellor shall appoint (a) three at-large representatives and two members of the UCB faculty, nominated by the UCB Academic Senate, with preference given to faculty members from the Haas School of Business, each of whom shall be appointed to a two-

year term. Nothing in this Agreement shall be construed as prohibiting the re-appointment of members upon the expiration of their terms.

**2.2** The ASUC shall appoint in the manner prescribed in the Charter of the Board (described in Section 2.4 below), four representatives, of whom two shall be undergraduate students, each of whom shall serve two year terms, and two shall be graduate students.

**2.3** The President of the ASUC, the Executive Vice President and the President of the Graduate Assembly, or their designates are also voting members of the Board.

**2.4** The Charter of the Board (attached hereto as Exhibit A and made a part hereof) shall set procedures of the Board, and shall specify attendance requirements for members of the Board. The Charter of the Board shall not be amended except by a two-thirds vote of the Board, and approval by the parties hereto.

**2.5** The Chancellor shall have the authority to reverse any action or decision of the Board. Prior to reversing any such action or decision, the Chancellor shall within ten (10) business days of that action or decision, deliver in writing to each member of the Board a written statement setting forth the basis for the intended reversal. The Board, or any member thereof, may, within five (5) business days following receipt of such statement, deliver to the Chancellor a written response. If the Board issues a written response within the allotted time, the Chancellor must issue his/her intended decision within five (5) business days.

**2.6** The Chancellor and the ASUC have delegated to the Board the authority necessary for it to carry out its functions as described in this Agreement.

**3. FUNCTIONS AND RESPONSIBILITIES OF ASUC COMMERCIAL AND STUDENT SERVICES BOARD.** The Board, in addition to the duties described in Section 4, below, shall do the following:

**3.1 Establish Standards for ASUC Commercial Activities.** The Board shall from time to time establish standards for the conduct of ASUC Commercial Activities.

**3.2 Review of Performance.** The Board shall at least annually prepare and submit to the ASUC, the Chancellor, and the Executive Director a written report examining the quality of service and the financial performance of each provider of ASUC Commercial Activities.

**3.3 Budget Responsibility.** The Board shall, prior to adoption of each annual budget of the Auxiliary, review the proposed budget, and approve or reject it, and shall, as necessary, during each fiscal year, approve variances to the Auxiliary's budget. The annual budget shall include an appropriation for a Reserve Fund, which may, upon prior approval of the Board, be used for the replacement, repair, and renovation of the premises, facilities, and equipment occupied or used directly in connection with ASUC Commercial Activities, or for expansion of ASUC Commercial Activities. In addition to other regular reviews, the Board shall review the year-end accounting of the Auxiliary to ensure that budgets are met, variances explained, and key activities tracked for performance to marketing and financial objectives.

**3.4 Personnel Responsibility.** The Board may give advice to the Executive Director as to the performance review of Auxiliary personnel, and to the Chancellor or his/her designee on the performance review of the Executive Director, including a recommendation of termination in office or of reassignment. Additional rights and responsibilities regarding personnel are granted to the Board Personnel Committee as advisory to the Executive Director specified in Exhibit A.

#### **4. ASUC COMMERCIAL ACTIVITIES CONTRACTS, LEASES, AND OPERATIONS.**

**4.1 Third Party Lessee/Vendors.** For the purposes of this Agreement, the Lower Sproul Student Union refers to Eshleman Hall, Martin Luther King, Jr. Student Union, Anthony Hall, and parts of Cesar Chavez or their successor facilities. At all times during the term of this Agreement the parties, through the procedures stated herein (Sections 4.2 and 4.3), and in conformance with (a) all applicable University policies and procedures and (b) the policies and standards approved by the Board, shall seek to contract, obtain and maintain leases, licenses or operating agreements with third parties, pursuant to which such parties will (i) occupy space within the Lower Sproul Student Union to sell books and those types of student-related merchandise; (ii) conduct food service activities at the Lower Sproul Student Union; and (iii) conduct such other ASUC Commercial Activities as deemed appropriate by the Board. The ASUC conducts ASUC Commercial Activities pursuant to agreements with the University and/or third parties, and such activities are conducted at campus locations other than the Lower Sproul Student Union or in Student Activity space, the ASUC shall assign its rights under such agreements to the Auxiliary, and the Auxiliary shall conduct, at the direction of the Board, such ASUC Commercial Activities through the date on which such contracts would terminate. In addition, the Auxiliary may, with the approval and direction of the Board, either directly or through agreements with third parties, conduct such other commercial activities, which are of benefit to the UCB campus and students.

**4.2 Use of RFPs.** The parties acknowledge that it is necessary and appropriate to prepare and circulate requests for proposals ("RFPs") from would-be third party commercial vendors. All RFPs will be issued by the Auxiliary at the direction of the Board, only after such RFPs are approved by the Board. The Board (i) shall evaluate the proposals submitted in response to an RFP and (ii) shall select the party whose proposal resulted in the highest score to be offered a leasehold interest, substantially on the terms set forth in the RFP, for operation of an ASUC Commercial Activity in Commercial Activity Space. After such selection, the Auxiliary, at the direction of the Board, shall negotiate a lease, license or operating agreement with the selected party, which upon approval of the Board, shall be signed by the Chancellor or designee and the ASUC President, and such other officers as may be necessary.

**4.3 Non-RFP Contracts.** The Board may authorize the Auxiliary to negotiate and, upon approval of the Board, execute certain minor leases, licenses or operating agreements which may be necessary for the normal conduct of business, where permissible under applicable University policy. The Board may delegate to the Executive Director, the authority to approve certain types of agreements.

**4.4 Promotion of ASUC Commercial Activities.** In the spirit of collaboration between the ASUC and the University exemplified in the Lower Sproul Project,

and recognizing the great value ASUC Commercial Activities and their revenues bring to the campus community at-large, the University shall encourage all campus units to purchase goods and services that are provided through ASUC operations. Where otherwise consistent with applicable law and University policy, all campus units will work to make the Auxiliary aware of opportunities prior to awarding commercial contracts for an RFP or on a non-bid or non-RFP basis, in order to determine whether the Auxiliary is in a position to secure a vendor or supplier of such goods or services.

#### **4.5 [Intentionally Omitted.]**

**4.6 ASUC Property.** All personal property including, without limitation, cash, cash equivalents accounts receivable, inventory, and commercial fixtures in Commercial Activities Spaces, which are owned by the ASUC shall remain the property of the ASUC.

### **5. ASUC FINANCIAL ACCOUNTING.**

**5.1 ASUC Accounts.** Four separate bank accounts are in existence: the ASUC Commercial Revenues Account, ASUC Non-Commercial Monies Account, the GA Commercial Revenues Account, and the GA Non-Commercial Monies Account. Revenue from ASUC Commercial Activities shall be deposited into each account in accordance with Section 6.2.

**5.2 Fair Share Percentage.** The ASUC fair share percentage is the number of enrolled undergraduate students as a percentage of all enrolled students for the previous academic year (September through May). The Graduate Assembly fair share percentage is one hundred percent (100%) less the ASUC fair share percentage.

**5.3 Accounting.** The Auxiliary shall provide accounting services for the ASUC and ASUC Commercial Activities. All the Non-Commercial Monies Accounts and the Commercial Revenue Accounts shall be established and maintained with two groups of signatories. The signatories of Group "A" shall be the ASUC President, ASUC Executive Vice President, and the GA President. The signatories of Group "B" shall be the Executive Director and his/her designee(s). Checks drawn in the amount of \$1,000 or more shall require two signatures, at least one of which shall be from Group "A". A stop payment order with respect to checks of \$1,000 or more shall require two signatures, at least one of which shall be from Group "A". The bank(s) at which these accounts are maintained shall issue duplicate monthly statements to the ASUC President, the GA President, and the Auxiliary.

#### **5.4 Access to Information/Retention of Record.**

**5.4.1** Any Executive Officer of the ASUC and GA, and any member of the Board may at all reasonable times during regular business hours inspect the books and records of the Auxiliary and make copies and extracts and may discuss the affairs, accounts and finances of the Auxiliary with its managers and employees, and the University will provide to the ASUC, Graduate Assembly, and the Board statements which are accurate in all material respects regarding the operations of the Auxiliary, its rental income, its Operating Expenses, and, to the extent known to the University, the

operations of third party providers of ASUC Commercial Activities, all at such times and as often as shall be reasonably requested.

**5.4.2** Copies of all proceedings of the Board shall be distributed to the ASUC, GA and the University as soon as reasonably possible after they become available.

**5.4.3** The Board, the Auxiliary and the ASUC shall maintain their respective business, administrative, and financial records and reports in electronic form, in accordance with the record retention policies of the University, but in no event for less than five years.

## **6. INCOME FROM ASUC COMMERCIAL ACTIVITIES.**

**6.1 Operating Expenses/Control of Operating Expenses.** "Operating Expenses" shall mean all charges or expenses incurred by the Auxiliary and all disbursements which the Auxiliary or the University shall pay as a result of (a) the ownership, operation, maintenance, repair and replacement of the premises, facilities, or equipment occupied or used in connection with the provision of ASUC Commercial Activities and (b) conducting or outsourcing the services described in Section 7, below including, but not limited to, providing heating, electrical, water, sewer, janitorial services, security services, materials, supplies and equipment, and the annual amortized cost of expenditures required for safety purposes plus (i) the allocated cost of all Auxiliary personnel, providing services reasonably required to carry out the oversight and management responsibilities related to ASUC Commercial Activities, and (ii) the allocated cost of all ASUC facilities and equipment used in providing such services. There will be two new significant milestones in the evolution of the ASUC budget. First will be the first full year after the transition to Student Affairs, after changes in the operating model have been implemented, currently estimated at FY 12-13. The second will be after the new Lower Sproul Student Union has opened, currently estimated at FY 15-16. After these two events fiscal prudence should be exercised in matching recurring revenues to recurring expenses. This allows for the use of one time capital and other investments from reserves.

**6.2 ASUC Commercial Activities Income.** All income received by the University or the ASUC from third parties conducting ASUC Commercial Activities shall be allocated as follows:

**6.2.1** such third parties shall make periodic payments to the Auxiliary sufficient in the aggregate to cover the estimated Operating Expenses for the then current fiscal year of the Auxiliary; and

**6.2.2** Such third parties shall pay the balance of their contractual payment obligations ("student government payments") shall be directed to the student governments as follows:

A. If the total annual student government payments are \$274,000 or less, then they shall be deposited into the ASUC commercial revenues account.

B. If the total annual student government payments are greater than \$274,000, then the ASUC fair share percentage of the total annual student government payments shall be deposited into the ASUC commercial revenues account, with the remainder being deposited into the Graduate Assembly commercial revenues account.

**6.3 Reconciliation.** Within sixty (60) days after the end of each Fiscal Year, any shortfall in income to the Auxiliary (i.e., to the extent income is less than actual Operating Expenses) shall be credited by the ASUC to the University and any income received by the University in excess of Operating Expenses shall be credited by the University to the ASUC Commercial Revenues Account.

**6.4 Auxiliary Direct Operations.** Revenues from ASUC Commercial Activities directly conducted by the Auxiliary shall be used first to offset Operating Expenses, and second paid to the ASUC Commercial Revenues Account.

## **7. USE OF BUILDINGS: BUILDING OPERATIONS.**

**7.1 Building Ownership.** The University owns the Lower Sproul Student Union. However,

**7.1.1** The Student Union was financed in part by bonds, which were paid in full by students attending UCB through mandatory student activity fees and through a student-initiated referendum fee;

**7.1.2** Anthony Hall was donated to the Graduate Assembly on the condition that they maintain a student publication;

**7.1.3** The present Eshleman Hall was constructed with private and state funds as a building for student government and services on the UCB campus.

**7.1.4** The new Eshleman Hall and renovations to the remainder of the Lower Sproul Student Union are being funded as specified by the Lower Sproul MOUs 1, 2 and 3.

**7.2 Building Use.** As a result of the sources of funding for such buildings, the University has granted the ASUC, as the UCB student government, the right to occupy and use the following University buildings, subject to all applicable University policies and regulations: the Lower Sproul Student Union. Other than the Commercial Activity Space, those buildings are to be occupied and used for purposes of the official student government on the UCB campus and for ASUC Student Activities. ASUC has the right to determine the usage policies and procedures, and allocation for student government and student activities of space in those buildings, excluding space currently devoted to ASUC Commercial Activities and the services referred to in Section 7.5 subject to applicable University policies.

**7.3 Term of Occupancy.** Occupancy and use of space in the Lower Sproul Student Union allocated to ASUC Student Activities shall continue until the parties hereto agree to the contrary or until the University shall provide, at least one year's prior notice, substitute

space which is equal to or superior to the space in Eshleman Hall, the Student Union, or Anthony Hall in terms of size, quality, proximity to the central campus, student life and services. In any case, the University elects to terminate occupancy of any of the above buildings, with the University providing substitute space, but without the consent of the ASUC, it shall only be done to support a compelling University interest.

**7.4 Repair, Renovation, Replacement of Space.** The University may undertake major repair, renovation, or replacement of the Student and/or Commercial Activity Space at any time during the term of the agreement. Prior to such action a proposal shall be presented to the Board and to the ASUC not less than one year prior to the proposed date of initiation of the project. Any such proposal shall include the proposed financial impact on Operating Expenses and Commercial Activities Revenue, the duration of the project, proposed temporary or permanent replacement space for ASUC Student Activities and ASUC Commercial Activities, in conformance with Section 7.3 above, and proposed replacement revenue, and shall be developed in consultation with the ASUC. The University shall meet and confer with the Board and representatives of the ASUC and GA and shall in good faith consider and respond to their respective comments prior to commencing any such project. The University shall not undertake any such project, which materially adversely affects ASUC Commercial Activities revenues or Operating Expenses, without the prior written consent of the ASUC.

**7.5 Leases and Assignment of Space.** Each lease for Commercial Activity Space must, before it is executed, be approved by the Board to the extent required by the Bylaws, Standing Orders, and generally applicable policy of the University. Each lease for Student Activity Space to registered student organizations or University entities for revenue, or to non-university entities, must, before it is executed, be approved by the Board and the parties hereto must agree in writing to the re-classification of such space as Commercial Activity Space only for the term of that lease. In all other cases, the ASUC shall have the full authority to assign Student Activity Space to registered student organizations or University entities.

**7.6 Safety.** The Auxiliary, after consultation, with the Board and the ASUC, shall take appropriate steps to assure a safe working, recreational, and study environment in all facilities occupied by the ASUC. The annual amortized cost of expenditures required for safety purposes shall be an Operating Expense.

**7.7 Building Modifications.** The ASUC shall not itself modify, nor shall it enter into any contract or other arrangements to modify, the physical structure, operating systems, or utility infrastructure of any campus building without prior written consent of the Chancellor.

**7.8 Building Use Policy.** The ASUC shall establish building use policies for Student Activity Space, in conformance with applicable University policies. The GA shall do the same for Anthony Hall and other graduate specific spaces in the Lower Sproul Student Union spaces. The Board shall establish building use policies for Commercial Activity Space, in conformance with applicable University policies. These policies shall be included in leases with third parties.

**8. USE OF UNIVERSITY TRADEMARKS AND SERVICE MARKS.** The ASUC shall use the trademarks and service marks of the University only in conformance with applicable University policies.

**8.1** The ASUC and GA may use the Cal logo and the UCB name and seal without paying any royalties for noncommercial ASUC and GA promotional materials such as flyers. This use must be consistent with applicable University policies in the same manner as other departments on campus.

**9. ASUC EMPLOYEES.**

**9.1 Employment.** The ASUC may retain persons providing legal, accounting, or other professional services as independent contractors. The ASUC may pay its elected and appointed officials and their staff stipends.

**9.2 Vendor Employment.** The RFP(s) to be issued for operation of ASUC Commercial Activities shall request that the third party vendor prioritize student employment opportunities.

**9.3 Employment Level Reports.** The Auxiliary shall report to the Board when additional employee positions are necessary for the maintenance of appropriate service levels, and shall create such positions upon approval of the Board and the University. Critical for approval will be identifying funding for new positions. The Auxiliary shall report to the Board when position eliminations are necessary in response to budgetary changes or service changes. Service changes require Board and University approval.

**9.4 ASUC Student Affairs Programs.** The Auxiliary shall provide additional services to the ASUC at its request, provided that funding sources can be identified either as an Operating Expense (provided that the ASUC or GA shall have specifically so designated) or from other sources controlled by or available to the ASUC or GA. The ASUC Center for Advising and Leadership (CAL), or its successor unit, is an ASUC Student Activity that will be included in the Auxiliary.

**10. INSURANCE AND INDEMNIFICATION.**

**10.1 Liability Coverage.** The University shall include the operations of the ASUC, the GA, and the Board under its public liability, products liability, property damage insurance, Workers' Compensation insurance, comprehensive dishonesty, disappearance and destruction insurance, buildings and contents insurance, unemployment insurance, automobile insurance, and any other necessary form of insurance.

**10.2 Indemnification.** The University shall defend, indemnify and hold harmless the members of the Board for all actions taken in good faith within the course and scope of the activities of the Board.

**10.3 Vendor Insurance.** All third party vendors conducting ASUC Commercial Activities shall carry reasonable amounts of liability insurance, which shall name

the University and the ASUC, and their respective officers, agents, employees and members as additional insured.

**11. CHANCELLOR'S AUTHORITY.** The Chancellor of UCB shall have the ultimate authority to ensure that ASUC Commercial Activities are conducted in a fiscally sound manner and that they contribute to a functional, attractive, safe and healthy campus environment. The Chancellor shall have the right to act to take such actions as are reasonably appropriate to correct any of the following with respect to ASUC Commercial Activities:

**11.1** Financial insolvency of any provider of ASUC Commercial Activities;

**11.2** Intentional use of University premises for unauthorized purposes;

**11.3** Willful breach of any University policy, rule or regulation in the conduct of ASUC Commercial Activities, or

**11.4** The existence of any nuisance, unsafe condition, or physically or educationally detrimental condition.

Any such action by the Chancellor shall be communicated in written format to the ASUC Senate, ASUC President, ASUC Auxiliary Executive Director, GA President, GA Vice President, and the Board ten (10) days prior to any action being taken. Any of the aforementioned people/groups will be given a chance to respond within ten (10) days of the Chancellor's notice. The Chancellor shall review and respond to these notices within five (5) business days before taking any final action.

**12. DISPUTE RESOLUTION.** Any dispute or controversy between the parties hereto, arising out of or related to this Agreement, shall be resolved as follows:

**12.1 Initial Procedures.** All concerns, complaints, or disagreements of the ASUC concerning the operation of ASUC Commercial Activities or any action or inaction of the Auxiliary shall be originally directed in writing to the Executive Director. The Executive Director shall attempt to resolve such matters informally as promptly as possible. If the matter cannot be resolved informally, the ASUC or GA may request a meeting to confer with the Executive Director, and then the administrator to whom the Executive Director reports. Such request shall be in writing, and the meeting shall take place within ten (10) business days after delivery of the request.

**12.2 Appeal to the Chancellor.** If resolution of a dispute cannot be achieved through the measures described in Section 12.1, above, the President of the ASUC and the President of the Graduate Assembly may appeal directly to the Chancellor whose decision shall be final. Any such appeal shall be in writing, setting forth the basis for the appeal. The Chancellor may, but shall not be obligated to, meet and confer with the President of the ASUC and GA regarding such appeal. Any decision of the Chancellor hereunder shall be in writing, shall be delivered to the Presidents of the ASUC and GA, and to the Board, and shall be accompanied by a written statement of the basis for such decision.

**13. TERM AND TERMINATION OF AGREEMENT.** This Agreement shall remain in effect until (i) the parties hereto mutually agree to terminate it, or (ii) the University shall elect to terminate this Agreement upon the dissolution of the ASUC or its termination under the University's "Policy on Student Governments" or the ASUC's abandonment of its function as the student government of UCB; provided, however, that nothing herein shall be deemed to affect, in any way, any existing agreement between the parties on that matter. Any termination by mutual agreement shall be in a writing mutually executed by the parties.

**14. SEVERABILITY.** If any part, term or provision of this Agreement is held by a court to be invalid, illegal or unenforceable in any jurisdiction, such part, term or provision shall, as to such jurisdiction, be inoperative and void to the extent of such invalidity, illegality or unenforceability; but the remaining parts, terms in full force and effect, and any such invalidity, illegality or unenforceability in one jurisdiction shall not invalidate or render unenforceable such part, term or provision in any other jurisdiction. The parties shall use their best efforts to replace the provision that is contrary to law with a legal one approximating to the extent possible, the original intent of the parties.

**15. ENTIRE AGREEMENT.** This Agreement embodies the entire agreement and understanding between the parties hereto relating to the subject matter contained herein. This Agreement supersedes all prior agreements and understandings, whether oral or written, between them with respect hereto, including the SOU, but excluding:

**15.1** Memorandum of Understanding ("MOU") executed between the parties on September 21, 1994, which is attached as Exhibit G.

**15.2** Lower Sproul Memoranda of Understanding (LS MOUs) one (1), two (2), three (3), the amendment to LS MOUs 1 and 2, signed on April 1, 2010, June 29, 2010, May 24, 2012, and March 26, 2012, respectively which are attached as Exhibits B, C, D, and E.

**15.3** Memorandum of Understanding between the ASUC and GA signed in 2010, attached as Exhibit F.

There are no agreements, representations, warranties, or statement, whether oral or in writing, with respect to the subject matter of this Agreement, except as expressly set forth or referred to above.

**16. AMENDMENTS.** This Agreement may be amended or modified only by writing, signed by the party against whom enforcement is sought. No modification, amendment or waiver of any of the terms and conditions of this Agreement, and no future representation, warranty, promise, or condition in connection with the subject matter of this Agreement shall be binding or effective for any purpose unless in writing and signed by the party to be bound by the modification or waiver, and any such modification, amendment or waiver shall be effective only in the specific instance and for the specific purpose given.

**17. ASSIGNMENT.** Neither party shall assign any of its rights or privileges under this Agreement without the prior written consent of the other party. Such consent shall not be unreasonably withheld.

**18. BINDING EFFECT AND PERSONAL LIABILITY.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

**18.1 No Personal Liability.** Notwithstanding anything to the contrary in this Agreement, or in any agreements or documents referenced in any of the foregoing, from and after the Effective Date, no person signing this Agreement on behalf of a party to such agreement(s) shall be personally liable in any way for the breach of any covenant or failure of any condition pertaining to such party under the foregoing agreements, and the parties hereby waive and release such persons individually from all claims on account of any such breach or failure.

**IN WITNESS WHEREOF,** the parties have executed this Agreement as of the date first above written.

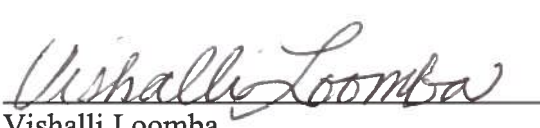
**UNIVERSITY:**

**ASUC:**

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**, a California corporation, on behalf of the University of California, Berkeley

**ASSOCIATED STUDENTS OF THE UNIVERSITY OF CALIFORNIA**, a California nonprofit unincorporated association

By:   
Robert J. Birgeneau  
Chancellor

By:   
Vishalli Loomba  
President

## **ARTICLE 1: NAME AND PURPOSE**

### **Section 1.1 NAME**

The name of this Board shall be the ASUC Commercial and Student Services Board (the "Board").

### **Section 1.2 PURPOSE**

The Board shall establish policy and standards for, and provide oversight over, all ASUC Commercial Activities in a manner consistent with all applicable University policies, as set forth in the ASUC Commercial Activities Agreement between the ASUC and the University of California, Berkeley.

### **Section 1.3 DELEGATION**

The Chancellor and the ASUC shall, as of the date on which Board first meets, be deemed to have delegated to the Board the authority necessary for it to carry out its functions as described in the ASUC Commercial Activities Agreement.

### **Section 1.4 DEFINED TERMS**

Capitalized terms used in the Charter shall have the definitions used in the ASUC Commercial Activities Agreement by and between The Regents of the University of California ("University") and the Associated Students of the University of California.

## **ARTICLE 2: MEMBERS - APPOINTMENT AND REMOVAL**

### **Section 2.1 MEMBERSHIP**

The Board shall consist of twelve (12) voting members, who shall be appointed as follows:

- A. The ASUC President, ASUC Executive Vice President, and GA President who shall become members of the Board upon their respective election to office and who shall remain members until their successors shall have been elected.
- B. Two Undergraduate Members, who at all times during their terms shall be enrolled at the University of California, Berkeley as undergraduate students. Undergraduate Members shall be appointed for a term of two years commencing on the first day of July in the year of their appointment.
- C. Two Graduate Members, who at all times during their terms shall be enrolled at the University of California, Berkeley as graduate level students. They shall serve a one-year term commencing on the first day of July in the year of their appointment.

- D. Three at-large representatives of the University who shall be appointed by the Chancellor to a term commencing on July 1, and which expires on June 30, two years later.
- E. Two Faculty Members who at the time of their appointment are members of the Academic Senate of the University of California, Berkeley, and who have been nominated by the Academic Senate and appointed by the Chancellor to a term of two years, commencing on July 1, and which expires on June 30, two years later. In nominating and appointing these members, preference shall be given to faculty from the Haas School of Business.

## **Section 2.2 APPOINTMENTS OF UNDERGRADUATE MEMBERS**

Undergraduate Members (Section 2.1B) shall be nominated by a committee consisting of the ASUC President, the ASUC Executive Vice President, and one current Undergraduate Member of the Board (the outgoing member, if available) and two members of the ASUC Senate, who shall be non-voting members of the committee. The committee shall forward one nominee to the ASUC Senate. Upon approval of the ASUC Senate, that person shall be appointed to the Board. The committee shall forward its nomination to the ASUC Senate no later than the last senate meeting of each spring semester, or within three weeks after a vacancy occurs.

## **Section 2.3 APPOINTMENTS OF GRADUATE MEMBERS**

Graduate Members (Section 2.1C) shall be nominated by the President of the Graduate Assembly, and confirmed by the GA Executive Board.

## **Section 2.4 NON-VOTING MEMBER**

The Executive Director of the ASUC Auxiliary (the "Auxiliary") shall be a non-voting, *ex-officio* member of the Board.

## **Section 2.5 ATTENDANCE REQUIREMENTS**

Any member of the Board (except those enumerated in Section 2.1A) shall be removed by the Board if s/he is absent from three (3) consecutive monthly meetings, or absent from more than one-third (1/3) of the Regular Meetings of the Board in a given Semester, without a valid excuse. Any person that is removed from the Board under this Section shall be ineligible for re-appointment to the Board for a period of one year. All members are allowed to send proxies with prior notice, at the discretion of the Chair of the Board.

## **Section 2.6 REMOVAL OF MEMBERS**

An Undergraduate Member may be removed from the Board with or without cause by a three-fourths (3/4) vote of the entire ASUC Senate. A Graduate Member may be removed from the Board with or without cause by a two-thirds (2/3) vote of the Graduate

Assembly. The Chancellor may remove, at any time, any member appointed by the Chancellor. The Academic Senate may remove, at any time, any member appointed by the Academic Senate.

## **Section 2.7 RESIGNATION OF MEMBERS**

Any member of the Board may resign effective upon giving written notice to the Chair of the Board, unless a later time of effectiveness is specified in the notice.

## **Section 2.8 FILLING VACANCIES**

Vacancies on the Board shall be filled in the same manner as original appointments, by the person or entity that appointed the departed member.

## **Section 2.9 DUTIES OF MEMBERS**

- A. Each member shall perform the duties of a member of the Board, in good faith, in a manner the member believes to be in the best interests of the University of California, Berkeley, and its students, and with the care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.
- B. In performing his or her duties each member shall be entitled, so long as he or she acts in good faith after reasonable inquiry when the need for it is indicated by the circumstances and without knowledge that would cause the reliance to be unwarranted, to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:
  1. One or more officers of the Auxiliary whom the member believes to be reliable and competent in the matters presented.
  2. Counsel, independent accounts, or other persons regarding matters that the member believes to be within the person's professional or expert competence.
  3. A committee of the Board on which the member does not serve, regarding matters within its designated authority, which committee the member believes merits confidence.

A person who performs the duties of a member in accordance with subsections 2.9A and 2.9B will have no liability based on any alleged failure to discharge the person's obligation as a member.

## **Section 2.10 REIMBURSEMENT**

Members shall receive reimbursement for their expenses as shall be determined by agreement between the University and the ASUC.

## **ARTICLE 3: DUTIES OF THE BOARD**

### **Section 3.1 ESTABLISH STANDARDS FOR ASUC COMMERCIAL OPERATIONS**

The Board may:

- A. Establish standards for and define the scope of services to be offered by third party vendors and the Auxiliary;
- B. Determine the need for and approve the issuance by the Auxiliary of Requests for Proposals for third party vendors of ASUC Commercial Activities;
- C. Evaluate proposals of and select third parties to operate ASUC Commercial Activities;
- D. Establish standards of social responsibility for third party vendors;
- E. Determine the manner of providing ASUC Commercial Activities when leases and operating agreements for their provision expire;
- F. Establish and review policies for the use of Commercial Activity Space, including appearance of facilities in relation to the campus surroundings;
- G. Establish restrictions on use of Commercial Activity Space, including appearance of facilities in relation to the campus surroundings; and
- H. Review and approve proposed leases for Commercial or Student Activity Space.

### **Section 3.2 BUDGET RESPONSIBILITY**

- A. The Board shall, prior to adoption of each annual budget of the Auxiliary, review the proposed budget, and approve or reject it, and shall, as necessary, during each fiscal year, review and approve proposed variances to the Auxiliary's budget.
- B. During Budget review, the Board may recommend amendments or alterations to the Budget.

### **Section 3.3 FORWARDING ACTIONS AND DECISIONS**

The Chair of the Board shall, within five (5) business days, forward to the ASUC Senate and the Chancellor or his/her designee a written report setting forth each decision or action of the Board. The Chair shall also include any minority reports submitted to him/her during this period.

### **Section 3.4 OTHER FUNCTIONS**

The Board may carry out any other duty delegated to it by the ASUC Commercial Activities Agreement or any duty necessary and proper to its functioning.

## **ARTICLE 4: OFFICERS**

### **Section 4.1 ELECTION AND TERM**

The officers of the Board shall be a Chair and Vice Chair, who shall be elected by a majority vote. The Board shall elect its officers at its last Regular Meeting before June 1 of each year. Officers of the Board shall serve a term of one year, commencing upon election.

### **Section 4.2 VACANCIES**

In the case of a vacancy in the Vice Chair, the Board shall elect a new officer to complete the remainder of the term. In the case of a vacancy in the Chair, the Vice Chair shall become Chair and complete the remainder of the term, and a new Vice Chair shall be elected.

### **Section 4.3 QUALIFICATIONS OF CHAIR AND VICE CHAIR**

At all times, either the Chair or the Vice Chair of the Board shall be a student and the other shall be a University or Faculty representative.

### **Section 4.4 DUTIES OF THE CHAIR**

- A. To preside at meetings of the Board and moderate debate on any issue.
- B. To set the agenda of Board Meetings.
- C. To call Special Meetings of the Board.
- D. To appoint to Committees of the Board.

### **Section 4.5 DUTIES OF THE VICE CHAIR**

- A. To assist the Chair in the running of the Board.
- B. To carry out the duties of the Chair in his/her absence.

## **ARTICLE 5: MEETINGS**

### **Section 5.1 REGULAR AND MONTHLY MEETINGS**

The Board shall meet on a monthly basis from August through May. In addition to its monthly meetings, the Board may establish additional regular meetings at such times that it may determine.

### **Section 5.2 SUMMER MEETINGS**

The Board shall meet at least once during the months of June or July, on a date to be established by the Board.

### **Section 5.3 SPECIAL MEETINGS**

The Board, or the Chair or Vice Chair, may call a special meeting of the Board. If a special meeting is called during the period from August through May, each member of the Board shall be given at least forty-eight (48) hours' notice. If a special meeting is called during the months of June or July, each member shall be given at least fourteen (14) days' prior notice.

### **Section 5.4 NOTICE**

Notices may be either in writing or delivered by telecommunications in which confirmation of receipt is affected. Notice need not be given to any member who signs a waiver of notice or consent to the holding of the meeting or who actually attends the meeting. All such waivers or consents shall be filed with the minutes of the Board and made a part of the minutes of the meeting to which they pertain.

### **Section 5.5 RULES OF ORDER AND QUORUM**

Unless the Board adopts other rules, it shall use the most recent edition of Robert's Rules of Order, Newly Revised. Six (6) members of the Board shall constitute a quorum to conduct business, but a smaller number may convene to hear reports or consider items as a Committee of the Whole. The members present and voting at a duly called meeting at which quorum initially exists may continue to transact business notwithstanding the withdrawal of enough members to leave less than a quorum if any action thereafter taken is approved by at least the number of members necessary to carry a matter.

### **Section 5.6 AUXILIARY DIRECTOR REPORTS**

At each meeting of the Board, the Executive Director of the Auxiliary shall report to the Board the status of the Auxiliary Operations, the financial status of the Auxiliary and of the ASUC Commercial Activities; he/ she shall report any actions taken by the Auxiliary that affect ASUC Commercial Activities or ASUC Student Activities, and shall notify the Board of any concern of any vendor conducting ASUC Commercial Activities.

## **Section 5.7 COMMITTEE REPORTS**

At each meeting of the Board, each Advisory Committee and committee of the Board shall report its activities to the Board, and include in writing any recommendations to the Board.

## **Section 5.8 OPEN MEETINGS**

Meetings of the Board shall be open to the public, except when the Board by a two-thirds (2/3) vote, shall vote to hold Executive Session. Notwithstanding such a vote, any member of the ASUC Senate may attend and participate as an observer in any Executive Session of the Board. The Board may hold Executive Session only when issues of litigation, investment, property acquisition, personnel, or final evaluation of RFP's for the operation ASUC Commercial Activities are to be considered. The Board shall not take any action in Executive Session.

## **Section 5.9 ACTION WITHOUT MEETING**

Any action or decision required or permitted to be taken by the Board or a committee of the Board may be taken without a meeting if two thirds (2/3) of the whole number of members of the Board, or two thirds (2/3) of the whole number of members of a relevant Committee, individually or collectively, consent in writing to that action, provided that all members of the Board, or the relevant Committee, are notified in writing prior to the action or decision. All actions by written consent shall have the same force and effect as a vote of the Board or the relevant Committee, and shall be entered into the minutes of the Board or relevant Committee at its next meeting. No action or decision shall be taken by written consent unless that action or decision is required to be taken prior to the next time that it is feasible for the Board or the relevant Committee to meet.

# **ARTICLE 6: COMMITTEES**

## **Section 6.1 ADVISORY COMMITTEES**

The Board shall establish the following Advisory Committees: i) Personnel, ii) Business Development, and (iii) Finance. Each Advisory Committee shall consist of five (5) persons, a majority of whom shall be students, drawn from interested members of the campus community, at least one of whom shall be a member of the Board and who shall serve as Chair. Members of the Advisory Committees shall be appointed by the Chair of the Board, with the advice and consent of the Board and shall serve at the pleasure of the Board. ASUC Senators are encouraged to serve on committees which interest them.

## **Section 6.2 PERSONNEL COMMITTEE**

The Personnel Committee shall serve to advise the Board on policy, approving the addition of staff positions to the Auxiliary, and, when appropriate, giving advice to the Executive Director of the Auxiliary as to the performance review of Auxiliary personnel.

The Personnel Committee shall also provide the Campus Administrator who the Executive Director reports to with a performance review of the Executive Director of the Auxiliary, including a recommendation of termination in officer or of reassignment. The Executive Director is responsible for the performance of Auxiliary personnel, including but not limited to, hiring, performance management, equity raises, and staffing changes.

### **Section 6.3 BUSINESS DEVELOPMENT COMMITTEE**

The Business Development Committee shall serve to advise the Board on policy in regard to contracts, operations, and promotion of ASUC businesses, including retail and food vendors, the bookstore, and any future business. This committee should continually seek new opportunities to enhance revenue generation and expansion of ASUC businesses to other parts of campus.

### **Section 6.4 FINANCE COMMITTEE**

The Finance Committee shall work closely with the Auxiliary's Accounting and Business Services Director, or the successor position, and her/his staff to advise on the budget, strategic planning, and the development of business plans of the ASUC Commercial Services. The Finance Committee will also work with the Chair of the Board to train Board members of their fiduciary responsibilities as Board members at the start of each year.

### **Section 6.5 COMMITTEES OF THE BOARD**

The Chair of the Board shall, as necessary, appoint, with the advice and consent of the Board, *ad hoc* committees of the Board to consider questions before the Board (such as budgets, rules, etc.) Such committees shall dissolve on the completion of their assigned task. Committees of the Board shall consist only of members of the Board.

## **ARTICLE 7: AMENDMENTS**

### **Section 7.1 AMENDMENTS**

Amendments to this Charter may be proposed by a two-thirds (2/3) vote of the Board, and shall take effect upon ratification by the ASUC Senate or by the Chancellor. If any amendment to this Charter in any way conflicts with the ASUC Commercial Activities Agreement, the ASUC Commercial Activities Agreement shall control.